

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ESTEBAN RODRIGUEZ and DEPARTMENT OF DEFENSE,
DEPENDENTS SCHOOLS, Arlington, VA

*Docket No. 99-349; Submitted on the Record;
Issued April 4, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a left upper extremity condition in the performance of duty.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a left upper extremity condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

On June 9, 1998 appellant, then a 33-year-old maintenance helper, filed an occupational disease claim alleging that he sustained nerve damage in his left upper extremity due to various work duties including vacuuming, lifting heavy objects, sweeping, mopping, painting interior and exterior areas, washing walls and windows, trimming plants, and picking up trash. Appellant did not stop work but began to work in a light-duty position. By decision dated September 10, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a left upper extremity condition in the performance of duty.

In the present case, the Office accepted the existence of various work duties appellant performed as a maintenance helper for the employing establishment. The Board finds, however, that appellant did not submit sufficient medical evidence to establish that he sustained a left upper extremity condition due to such employment factors.

In support of his claim, appellant submitted May 28, 1998 notes in which Dr. Jorge L. Sifre-Torres, an attending physician Board-certified in preventative medicine, indicated that he had nerve entrapment of his left elbow in the form of cubital tunnel syndrome. Dr. Sifre-Torres recommended that appellant engage in light-duty work. These notes, however, are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on the cause of appellant's left upper extremity condition.⁵ Appellant also submitted a July 8, 1998 note in which Dr. Rafael Tanon, an attending Board-certified family practitioner, stated that electromyogram and nerve conduction testing revealed left ulnar entrapment across the elbow. Dr. Tanon also recommended that appellant engage in light-duty work, but did not provide any indication that appellant's left upper extremity condition was related to the accepted employment factors. The Office requested that appellant submit medical evidence with a rationalized opinion

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

relating his condition to employment factors, but appellant did not submit such evidence prior to the issuance of the Office's September 10, 1998 decision denying his claim.⁶

The decision of the Office of Workers' Compensation Programs dated September 10, 1998 is affirmed.

Dated, Washington, D.C.
April 4, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ Appellant submitted additional evidence after the issuance of the Office's September 10, 1998 decision. However, the Board cannot consider such evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c). Appellant may wish to resubmit such evidence to the Office through the reconsideration process; *see* 5 U.S.C. § 8128; 20 C.F.R. § 10.138.